IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2785/05

IN

FIRST APPEAL NO.496 OF 2005

Smt.Anandi Balkrishna Zendekar

& Ors. .... Applicants

Versus

1.New India Assurance Co.Ltd

2. Javed Ahmed Gorame ... Respdts.

Mr.T.J. Mendon for applicants.

Mr. S.M. Dange for respondent.

ALONGWITH

CIVIL APPLICATION NO.1103/05

IN

FIRST APPEAL NO.496/05

New India Assurance Co.Ltd ..Applicant.

Vs.

Smt.Anandibai B. Zendekar & Ors...Respdts.

Mr.Dange Advocate for applicant.

Mr.Mendon for respdts.

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CORAM: S.B.MHASE &

S.R.SATHE,JJ.

DATE : 27th June 2005.

PC:

1. Heard both sides. Civil Application No.1103/05 has been filed by the original appellant/Insurance Company for the stay to the execution of impugned award.By order dated 21st March 2005, this Court has directed appellant/company to deposit the amount of award alongwith the interest as directed by the Motor Accident Claims Tribunal within the period of 8 weeks and thus, stayed the award. The amount has been deposited and Insurance Company has deposited Rs.17,25,876/-. Therefore, the Civil Application No.2785/05 has been filed by the original claimant who are respondent Nos. 1 to 5 in main appeal. Learned counsel for the Insurance Company submitted that the total amount may not be released in favour of original

claimant. He relied upon the Judgement of Apex Court reported in **2000 JT (Supplement 1)S.C.**

207 in case of The Oriental Insurance Co.Ltd. Vs. M.S.Lakshmisha & Ors. and submitted that amount more than 50% can not be released and that too on furnishing bank guarantee. Learned counsel who appears for applicant submitted that the said Judgement is not applicable in the facts and circumstances of present case. He submitted that the vehicle was insured and the accident is admitted. The insurance company has come to this Court making grievance that there is violation of conditions of insurance contract by the insurer. He submitted that the Insurance Company and the claimants has nothing to do with each other. He further submitted that since appeal of Insurance Company is equally pending against the Insurer, in case insurance company is not found to be liable , appropriate decree can be passed against the insurer who is respondent No.6 in the present appeal.

2. We find substance in the submissions raised by the learned counsel for claimant because the dispute as revealed from the appeal

memo is between the Insurance Company and the insurer respondent NO.6. In such intersay dispute between appellant and respondent no. 6, it will be inappropriate to keep the original claimants deprived from the amount which they are entitled for. However, in view of pendency of appeal, we are not inclined to release total amount without bank guarantee. We find it appropriate to release the amount of Rs.10 lacs without the bank guarantee and the rest of the amount to be released on furnishing bank guarantee. Therefore, we pass following order.

-ORDER-

1) The trial court is hereby directed to release the amount of Rs.10 lacs without bank guarantee in favour of claimants. From the said amount arrangement as directed by the trial court in respect of deposit shall be carried

out. Rest of the amount shall be released in favour of claimants on furnishing bank guarantee, which will be continuously operative till the final disposal of appeal and two weeks

thereafter.

2) The amount of Rs.25,000/- which is deposited by appellant/Insurance Company in this Court shall be sent to the trial court for disbursement as directed above.

3) With these directions both these applications are disposed off.

(S.R.SATHE) (S.B.MHASE)